

# **EXHIBIT 73**

Michael McClellan - February 20, 2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

CSX TRANSPORTATION, INC., )  
Individually and on behalf )  
of NORFOLK & PORTSMOUTH )  
BELT LINE RAILROAD )  
COMPANY, )  
                        )  
Plaintiff, )  
                        )  
V.                      ) NO. 2:18cv530  
                        )  
NORFOLK SOUTHERN RAILWAY )  
COMPANY, NORFOLK & )  
PORTSMOUTH BELT LINE )  
RAILROAD COMPANY, JERRY )  
HALL, THOMAS HURLBUT, )  
PHILIP MERILLI and CANNON )  
MOSS, )  
                        )  
Defendants. )

DEPOSITION UPON ORAL EXAMINATION OF

MICHAEL McCLELLAN

TAKEN ON BEHALF OF THE PLAINTIFF

Virginia Beach, Virginia

February 20, 2020

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1           A       Yes.

2           Q       And do you recall approximately how much  
3     capital Norfolk Southern contributed to funding for the  
4     Heartland Corridor?

5           A       I don't. The Heartland Corridor also  
6     included four other things as we talked about. It  
7     included the expansion of our Columbus facility,  
8     potentially new facilities at Roanoke and Prichard and  
9     the expansion of a rail yard at Crewe, Virginia. Those  
10    were the four other components of what we call the  
11    Heartland Corridor.

12          Q       Okay.

13          A       The Heartland Corridor was the clearance  
14    project.

15          Q       If you look at the second to last  
16    sub-bullet point under that one, it says, "In 2005  
17    intermodal --" is that a reference to your unit there,  
18    intermodal?

19          A       I believe so.

20          Q       Okay.

21                 "-- completed the final value proposition  
22    and got approval to proceed with an additional  
23    investment of up to 83 million for the two projects."

24          A       That's what it says.

25          Q       In your understanding, is that referring

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1 to 83 million of capital that Norfolk Southern would be  
2 adding to the projects?

3 A I cannot recall that specific number, but  
4 it seems right.

5 Q Okay. Would it be fair to say that  
6 Norfolk Southern contributed a substantial investment  
7 and capital of its own money to the Heartland Corridor  
8 project?

9 A It depends on how you define  
10 "substantial," but, yes.

11 Q Okay. How would you define "substantial"  
12 in your review at the time as the vice president of  
13 intermodal?

14 A It was over \$10 million.

15 Q Okay.

16 A Yeah.

17 Q I think on -- if you return to the first  
18 page of this document, Mr. McClellan.

19 A Sure.

20 Q Under the heading Intermodal there, you  
21 reflect a time period of 2000 to 2013 and you're  
22 following various metrics in that time frame; is that  
23 correct?

24 A Sure.

25 Q And was part of what you were saying in

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1           Q     I was asking you if you knew what  
2 Norfolk Southern's share of intermodal container volume  
3 was at the NIT facility.

4           A     Of rail intermodal business at NIT during  
5 my term? That is a number we probably would have  
6 known, yes.

7           Q     Okay.

8           A     We would not have known our share of  
9 total business, generally.

10          Q     And just so I can follow you, when you  
11 say "total business," what are you referring to in  
12 terms of total business?

13          A     The -- if the ports made the data  
14 available, and I believe the Virginia ports did, they  
15 would talk about how much rail business moved out, as  
16 they did here, and obviously we could take our number,  
17 subtract it from the number, and figure out what the  
18 other guy was doing.

19                 That may not have anything to do with  
20 share. There might be another 200,000 shipments that  
21 could have moved rail.

22                 And when we were looking at share, we  
23 would have considered all of the business that could  
24 move rail, not all of the business that did move rail.

25                 So when I focused on share, I focused

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1 more on opportunity rather than what was in front of  
2 me.

3 Q And the other services that could be  
4 taking that share, other than CSX, would be -- would  
5 that be trucking and then --

6 A Barge.

7 Q -- the barge that you indicated before?

8 A Yes, that is correct.

9 Q Okay. So I understand your answer --

10 A Right.

11 Q -- thank you, and what you were focused  
12 on.

13 But you would have calculated and would  
14 have known what Norfolk Southern's share was as  
15 compared to CSX of the intermodal freight business from  
16 NIT; is that correct?

17 A Correct, for ports, not for NIT  
18 necessarily.

19 Ports would report -- if ports reported  
20 their rail volumes, we would know what our share was.

21 Q So if I understand you, you're saying you  
22 might know what your share is from the collection of  
23 the Virginia ports?

24 A That is correct.

25 Q Okay. And do you recall approximately

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1 Q Okay.

2 A And the way -- we took our trains from  
3 Norfolk north up to Harrisburg, Pennsylvania, and then  
4 west.

5 Q So the Heartland Corridor gave you  
6 double-stack capacity on a shorter route --

7 A That's exactly right.

8 Q -- is that right?

9 A So the competitive advantage we had in  
10 Norfolk was we had -- all our markets were  
11 double-stacked and they were all single-stacked.

12 Q And then if you look further down,  
13 there's the market summary section under G.

14 Do you see that, Mr. McClellan?

15 A I do.

16 Q There's a reference sub-bullet there that  
17 says, "Norfolk has various advantages that will allow  
18 it to grow faster than Savannah and New York."

19 Do you see that?

20 A Yes.

21 Q Do you know what advantages were being  
22 referred to there?

23 A I will go from recollection.

24 New York had a couple of disadvantages at  
25 the time. They had a air draft problem, meaning big